

# 2021 ADVANCED DUI TRIAL ADVOCACY

September 20 – September 22, 2021  
Phoenix, Arizona



**Monday, September 20, 2021**

## **Jury Selection**

Presented by:

**Jared Johnson,**

Prop 207 TSRP, City of Scottsdale and GOHS

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
3838 N. Central Ave, Suite 850  
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ  
EXECUTIVE DIRECTOR



1

---

---

---

---

---

---

---



2

---

---

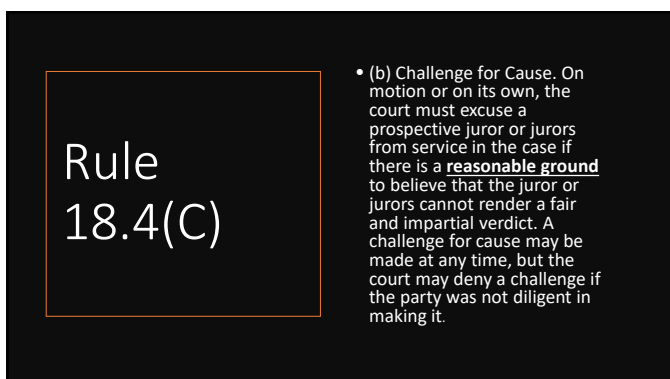
---

---

---

---

---



3

---

---

---

---

---

---

---

State v. Smith  
182 Ariz. 113  
(App. 1995)

- A prospective juror should be struck for cause “when a juror's answers demonstrate that he has serious misgivings about his ability to be a fair and impartial juror.”

4

---

---

---

---

---

---

---

---

State v. Smith  
182 Ariz. 113  
(App. 1995)

- An appellate court may overturn the trial court's refusal to strike a juror only if the trial court has abused its discretion.

5

---

---

---

---

---

---

---

---

State v. Smith  
182 Ariz. 113  
(App. 1995)

- “What the juror actually conveyed in the moment of speaking is so dependent on demeanor and intonation as to be inaccessible to a reviewing court. Thus, this is a paradigm case for deference to the trial judge, who had the opportunity to see and hear her speak.”

6

---

---

---

---

---

---

---

---

## State v. Blackman 201 Ariz. 527 (App. 2002)

- Although the court should remove for cause any juror who expresses serious misgivings about the ability to be fair and impartial, it need not remove jurors who ultimately assure the trial court that they can be fair and impartial.

7

---

---

---

---

---

---

---

---



## Changes to Preemptory Strikes

Things to be aware of

8

---

---

---

---

---

---

---

---

## Jury Selection Changes

- Rule 18.4. Challenges
- [No change]
- Challenge for Cause. ~~On motion or on its own, the court must~~ The court, on motion or on its own, must excuse a prospective juror or jurors from service in the case if there is a reasonable ground to believe that the juror or jurors cannot render a fair and impartial verdict. A challenge for cause may be made at any time, but the court may deny a challenge if the party was not diligent in making it.

9

---

---

---

---

---

---

---

---



## Jury Selection Changes

- Rule 18.5. Procedure for Jury Selection
- [No change]
- **Calling Jurors for Examination.** The court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates ~~plus the number of peremptory challenges that the parties are permitted.~~ Alternatively, and at the court's discretion, all members of the panel may be examined.

10

---

---

---

---

---

---

---

---

## Jury Selection Changes

- Rule 18.5. Procedure for Jury Selection
- (c) Scope of Examination. The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause ~~or enabling a party to intelligently exercise the party's peremptory challenges.~~

11

---

---

---

---

---

---

---

---

## Jury Selection Changes

- Rule 18.5. Procedure for Jury Selection
- (c) Scope of Examination. The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause ~~or enabling a party to intelligently exercise the party's peremptory challenges.~~
- Therefore, all questions should be designed to reveal bias. This gives us ground to object!

12

---

---

---

---

---

---

---

---

## Jury Selection Changes

- **(f) Challenge for Cause.** Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. If the court grants a challenge for cause, it must excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel. All challenges for cause must be made and decided before the court may call on the parties to exercise their peremptory challenges.
- (g) The parties may stipulate to the removal of a juror.

13

---

---

---

---

---

---

---

---

## Jury Selection Changes – Letter from AOC

By eliminating peremptory juror strikes, trial judges will need to ensure that litigators have time to develop and make appropriate arguments for removing jurors for cause. The Administrative Office of the Courts will develop training for judges on trial management to successfully implement the changes. Although a small percentage of cases proceed to a jury trial, the superior court in Arizona alone conducts approximately 600 criminal jury trials each year.

14

---

---

---

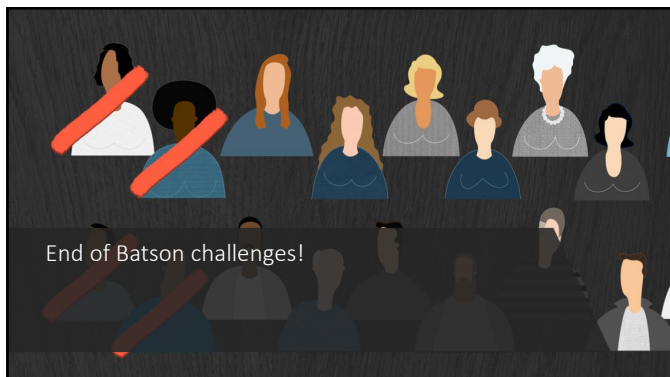
---

---

---

---

---



15

---

---

---

---

---


---

---

---

### Jury Selection

- Likely the most important part of trial.



16

---

---

---

---

---

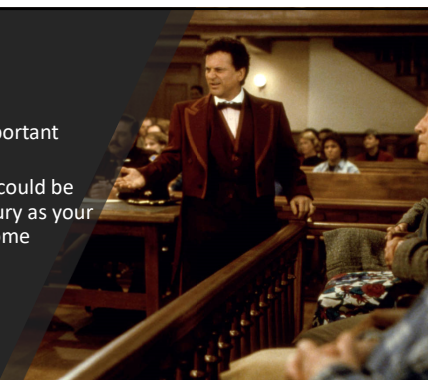
---

---

---

### Jury Selection

- Likely the most important part of trial.
- If done wrong you could be looking at a hung jury as your best possible outcome



17

---

---

---

---

---

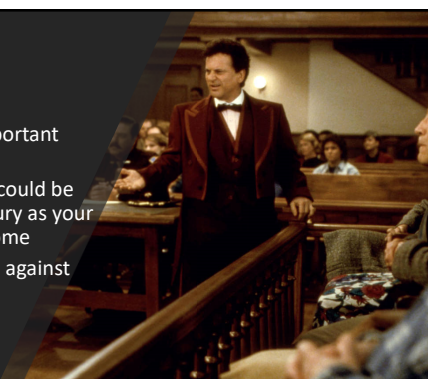
---

---

---

### Jury Selection

- Likely the most important part of trial.
- If done wrong you could be looking at a hung jury as your best possible outcome
- But that also works against defense



18

---

---

---

---

---

---

---

---

## Things to keep in mind

- Never assume that the jury knows anything about MJ or its effects – MJ is not alcohol
- Signs of impairment are frequently subtle or will not be understood by the jury without them first being educated
- A quiet juror is your enemy, ASK ASK ASK

19

---

---

---

---

---

---

---

---

## Voir Dire – Things to learn

- Prescription drug / alcohol / MJ use
- Prior jury service
- Prior DUI Charges
- Feelings on DUI laws (too harsh, too lenient, ect)
- Their beliefs on whether the particular substance in your case can be impairing

20

---

---

---

---

---

---

---

---

## Voir Dire Questions

- Ask about whether they are familiar with DUI laws in other states. (especially important in MJ cases)

21

---

---

---

---

---

---

---

---

### Voir Dire Questions

- Ask about whether they are familiar with DUI laws in other states. (especially important in MJ cases)
- Can they follow the law in Arizona even if it conflicts with the laws in other jurisdictions?

22

---

---

---

---

---

---

---

### Voir Dire Questions

- Ask about whether they are familiar with DUI laws in other states. (especially important in MJ cases)
- Can they follow the law in Arizona even if it conflicts with the laws in other jurisdictions?
- Is there anyone who believes you cannot possibly be impaired while on \_\_\_\_\_?

23

---

---

---

---

---

---

---

### Voir Dire Questions

- Ask about whether they are familiar with DUI laws in other states. (especially important in MJ cases)
- Can they follow the law in Arizona even if it conflicts with the laws in other jurisdictions?
- Is there anyone who believes you cannot be impaired while on \_\_\_\_\_?
- Does anyone here believe that ingesting \_\_\_\_\_ could make them a better driver?

24

---

---

---

---

---

---

---

### CSI Effect

- You have to prepare the jury that the trial will likely not they were expecting from tv.

25

---

---

---

---

---

---

---

### CSI Effect

- You have to prepare the jury that the trial will likely not they were expecting from tv.
- Ask them if they can set aside their preconceived notions and decide the case that is before them

26

---

---

---

---

---

---

---

### CSI Effect

- You have to prepare the jury that the trial will likely not they were expecting from tv.
- Ask them if they can set aside their preconceived notions and decide the case that is before them
- These questions are more about planting seeds so feel free to make it funny. Remind them that the trial will take longer than an hour with commercials.

27

---

---

---

---

---

---

---



28

---

---

---

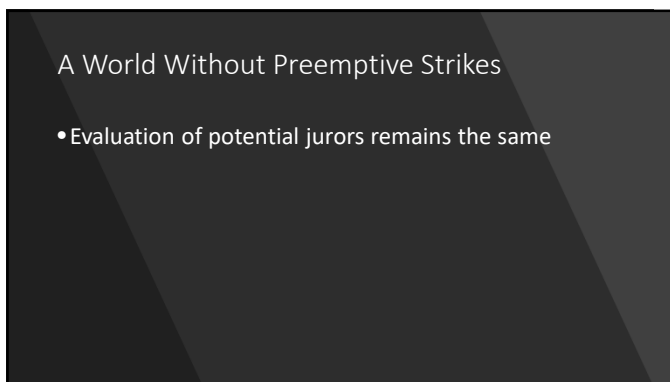
---

---

---

---

---



29

---

---

---

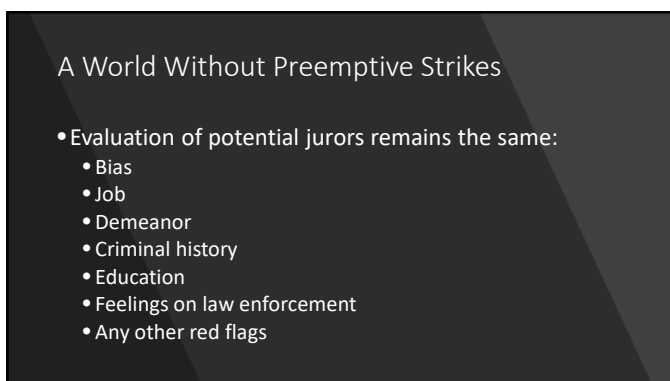
---

---

---

---

---



30

---

---

---

---

---

---

---

---

### A World Without Preemptive Strikes

- Instead of looking for who to strike we are looking for who to voir dire and topics to cover

31

---

---

---

---

---

---

---

### A World Without Preemptive Strikes

- Instead of looking for who to strike we are looking for who to voir dire and topics to cover
- More important than ever to take careful notes (we can't afford to miss following up with a single red flag)

32

---

---

---

---

---

---

---

### A World Without Preemptive Strikes

- Instead of looking for who to strike we are looking for who to voir dire and topics to cover
- More important than ever to take careful notes (we can't afford to miss following up on a single red flag)
- Come with as many questions pre-scripted as you can. More questions invites more responses which gives us more opportunity to follow up.

33

---

---

---

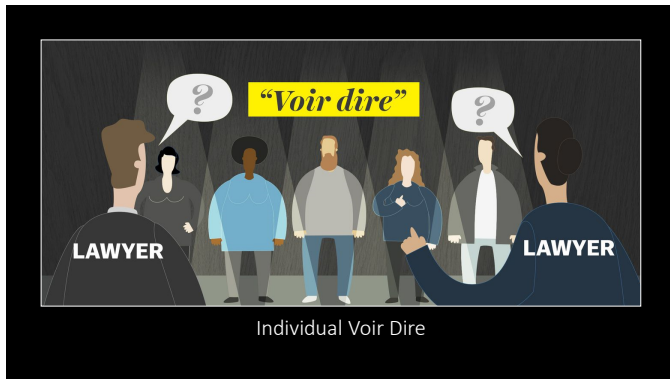
---

---

---

---





34

---

---

---

---

---

---

---

---

Individual Voir Dire

- This will make or break your case

35

---

---

---

---

---

---

---

---

Individual Voir Dire

- This will make or break your case
- The only way to remove a problem juror is to get them to articulate a potential bias

36

---

---

---

---

---

---

---

---

### Individual Voir Dire

- This will make or break your case
- The only way to remove a problem juror is to get them to articulate a potential bias

37

---

---

---

---

---

---

---

### Individual Voir Dire

- This will make or break your case
- The only way to remove a problem juror is to get them to articulate a potential bias
- Our burden is to show by a preponderance there is reasonable grounds to believe that a juror could not be fair?

38

---

---

---

---

---

---

---

### Individual Voir Dire

- Ask broad questions to get them to talk as much as possible
- Take careful notes and follow up on everything
  - Would it make it difficult....
  - Would you be able to set aside ...
  - How did that make you feel....

39

---

---

---

---

---

---

---

### Individual Voir Dire

- Ask broad questions to get them to talk as much as possible
- Take careful notes and follow up on everything
  - Would it make it difficult....
  - Would you be able to set aside ...
  - How did that make you feel....
- Sometimes you are going to need to keep asking questions until the Judge steps in.

---

---

---

---

---

---

---

---

40

### Individual Voir Dire

- Rely on your case agent

---

---

---

---

---

---

---

---

41

### Individual Voir Dire

- Rely on your case agent
- They are usually good at reading people and can help you identify those jurors that deserve your attention

---

---

---

---

---

---

---

---

42

### Individual Voir Dire

- Rely on your case agent
- They are usually good at reading people and can help you identify those jurors that deserve your attention
- Can help you to remember to follow up on all threads

43

---

---

---

---

---

---

---

Jared Johnson  
Prop 207 TSRP  
City of  
Scottsdale

[jjohnson@scottsdaleaz.gov](mailto:jjohnson@scottsdaleaz.gov)  
480-312-3164

44

---

---

---

---

---

---

---